



IAW/AF

PATENT

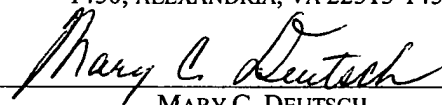
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: PLANK, ET AL
Serial No.: 10/658,682
Filed: SEPTEMBER 9, 2003
For: CYCLODEXTRIN-
CONTAINING
COMPOSITIONS AND
METHODS

Examiner: LESLIE A. WONG
Group Art Unit: 1794
Docket No. 6137US
(GMI0012/US)
Confirmation No. 2267

Mail Stop: Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I HEREBY CERTIFY THAT ON JULY 20, 2009, THIS
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MARY C. DEUTSCH

COMMUNICATION

Receipt is acknowledged of the communication from the Examiner in the above captioned application, providing a translation of the Japanese patent application.

It is respectfully submitted that, upon review of the Japanese application, that the translation further supports the position of Appellant. Specifically, JP 55-34042 describes the use of cyclodextrin to remove butter-like flavor and to improve meltability of ice cream in the mouth by adding cyclodextrin to butter or butter oil and using that material as a raw material for ice cream. JP '042 thus different from the present claims both in the nature of the food product to be improved, and the manner in which the cyclodextrin is used in the food product.

As noted on page 2 of the translation, JP '042 relates to "flavor improvement for frozen sweets such as ice cream, iced milk, sherbet, popsicles and milk shakes." The flavor improvement is achieved by "clathration of the butter flavor with cyclodextrin." Page 2 and also page 6 of the translation. A "clathrate" is defined as "relating to or being a compound formed by the inclusion of molecules of one kind in cavities of the crystal

lattice of another.” Merriam-Webster’s Online Dictionary. <http://www.merriam-webster.com/dictionary/clathrate>.

JP ‘042 thus utilizes cyclodextrin in a manner that is opposite that of the presently claimed invention, because it clathrates (or sequesters) butter flavor prior to incorporation of the cyclodextrin into the ice cream composition of the prior art. See pages 6 and 7 of the translation.

It is respectfully submitted that, first, the skilled artisan would have no reason to apply technology used for changing a melt characteristic of ice cream in a food product having a different physical nature, i.e. a food product having a crispy or springy characteristic. The change of the physical nature of the food product would destroy the functionality or purpose of this reference. Second, the skilled artisan would have had no reason to change the way in which the cyclodextrin is used from the prior art sequestering of butter flavor prior to incorporation into the food product to the presently claimed providing cyclodextrin that does not contain an additional ingredient when added to the food product. Again, such a change would destroy the functionality of this reference.

It is respectfully submitted that the Appellant’s have shown that the rejection of claims 1-12 and 21 and 22 is unsound and must be reversed. It is also respectfully submitted that that the pending claims are in condition for immediate allowance. Favorable action by the Board and allowance of all claims is, therefore, respectfully solicited

Dated: July 20, 2009

Respectfully submitted,

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